REMARKS/ARGUMENTS

This amendment is in response to the Office Action mailed on November 19, 2003, wherein Claims 1-12 were rejected. Claims 3 and 6 have been cancelled, Claims 1, 10, 11, and 12 have been amended, and Claims 13-15 have been added and Claims 1, 2, 4, 5, and 7-15 remain pending.

Claim Rejections under 35 U.S.C. § 103

On pages 2 of the Office Action Claims 1-2, 4, and 10-12 were rejected under 35 U.S.C. § 103 as being unpatentable over Toepfer et al. in view of Clar et al. On page 4 of the Office Action Claims 3 and 6 were rejected under 35 U.S.C. § 103 as being unpatentable over Toepfer in view of Clar and Szekely. On page 5 of the Office Action Claim 5 was rejected under 35 U.S.C. § 103 as being unpatentable over Toepfer in view of Clar and Gray Jr. et al. On page 6 of the Office Action Claim 7 was rejected under 35 U.S.C. § 103 as being unpatentable over Toepfer in view of Clar and Takagi et al. On page 6 of the Office Action Claim 8 was rejected under 35 U.S.C. § 103 as being unpatentable over Toepfer in view of. and Miller. On page 7 of the Office Action Claim 9 was rejected under 35 U.S.C. § 103 as being unpatentable over Toepfer in view of Clar and Lalor et al.

Applicants have amended Claims 1, 10, 11, and 12 to better describe the invention. Claim 1 includes claim elements directed to brake wear, Claims 10, 11, and 14 include claim elements directed to brake fade. Claim 12 includes claim elements directed towards computing a speed difference between front and rear tires and comparing the difference to a pedal position threshold value. Claim 13 includes claim elements directed towards estimating a road surface coefficient of friction based on the periodically measured deceleration and brake pedal position, determining an apply rate based on the estimated road coefficient of friction when conditions of degraded braking effectiveness are not identified, and determining the apply rate based on the estimated road coefficient of friction and a measure of braking effectiveness degradation when the condition of degraded braking effectiveness is identified. Claim 15 includes claim elements directed toward fluid leakage.

On page 4 of the Office Action, the Examiner stated that Szekely discloses brake wear and brake fading and that it would have been obvious to modify the teachings of Toepfer and Clar. Elements respectfully disagree with the Examiner. While brake wear and brake fade are phenomena commonly known in the automotive arts, there is not teaching or suggestion in art cited by the Examiner to identify brake wear or brake fade in a braking system and determine a new apply rate. Szekely merely discloses that brakes wear and fade. Toepfer and Clar are completely silent with respect to determining a new apply rate based on brake wear as acknowledged by the Examiner on page 4 of the Office Action. Accordingly, the combination suggested by the Examiner does not teach or suggest the present invention, and there would be no motivation to combine the Toepfer, Clar, Szekely. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Monteffore Hospital*, 732 F.2d 1572, 1577.

Applicants assert that the Examiner's combination of Toepfer, Clar, and Szekely is highly speculative and is not supported by prior art. A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of the invention to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of hindsight syndrome wherein that which only the invention taught is used against its teacher." *In Re Kotzab*, 217 F.3d 1365. The Examiner has fallen victim to such hindsight reconstruction.

On page 5 of the Office Action, the Examiner stated that Gray discloses compensating for road surface friction and that it would have been obvious to modify the teachings of Toepfer and Clar. Elements respectfully disagree with the Examiner. There is no teaching or suggestion in art cited by the Examiner to compensate for road friction in a braking system and determine a new apply rate based on road friction and braking effectiveness. Toepfer and Clar are completely silent with respect to determining a new apply rate based on road friction as acknowledged by the Examiner on page 5 of the Office Action. Accordingly, the combination suggested by the Examiner does not teach or suggest the present invention, and

there would be no motivation to combine the Toepfer, Clar, and Gray, Jr.. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Monteffore Hospital*, 732 F.2d 1572, 1577.

Applicants assert that the Examiner's combination of Toepfer, Clar, and Gray, Jr. is highly speculative and is not supported by prior art. A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of the invention to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of hindsight syndrome wherein that which only the invention taught is used against its teacher." *In Re Kotzab*, 217 F.3d 1365. The Examiner has fallen victim to such hindsight reconstruction.

On page 6 of the Office Action, the Examiner stated that Takagi et al. discloses degraded braking effectiveness as fluid leakage and that it would have been obvious to modify the teachings of Toepfer and Clar. Elements respectfully disagree with the Examiner. There is no teaching or suggestion in art cited by the Examiner to compensate for fluid leakage in a braking system and determine a new apply rate based on fluid leakage. Toepfer and Clar are completely silent with respect to determining a new apply rate based on fluid leakage as acknowledged by the Examiner on page 6 of the Office Action. Accordingly, the combination suggested by the Examiner does not teach or suggest the present invention, and there would be no motivation to combine the Toepfer, Clar, and Takagi. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Monteffore Hospital*, 732 F.2d 1572, 1577.

Applicants assert that the Examiner's combination of Toepfer, Clar, and Takagi. is highly speculative and is not supported by prior art. A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of the invention to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important

in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of hindsight syndrome wherein that which only the invention taught is used against its teacher." *In Re Kotzab*, 217 F.3d 1365. The Examiner has fallen victim to such hindsight reconstruction.

On page 6 of the Office Action, the Examiner stated that Miller discloses compensating for misadjustment of a brake and that it would have been obvious to modify the teachings of Toepfer and Clar. Elements respectfully disagree with the Examiner. There is no teaching or suggestion in art cited by the Examiner to compensate for brake adjustment in a braking system and determine a new apply rate based on a misadjustment in a braking system. Toepfer and Clar are completely silent with respect to determining a new apply rate based on a braking misadjustment as acknowledged by the Examiner on page 5 of the Office Action. Accordingly, the combination suggested by the Examiner does not teach or suggest the present invention, and there would be no motivation to combine the Toepfer, Clar, and Miller. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Monteffore Hospital*, 732 F.2d 1572, 1577.

Applicants assert that the Examiner's combination of Toepfer, Clar, and Miller is highly speculative and is not supported by prior art. A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of the invention to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of hindsight syndrome wherein that which only the invention taught is used against its teacher." *In Re Kotzab*, 217 F.3d 1365. The Examiner has fallen victim to such hindsight reconstruction.

On page 7 of the Office Action, the Examiner stated that Lalor et al. discloses compensating for road surface friction and that it would have been obvious to modify the teachings of Toepfer and Clar. Elements respectfully disagree with the Examiner. There is no teaching or suggestion in art cited by the Examiner to compensate for excessive vehicle weight in a braking system and determine a new apply rate based on excessive vehicle weight. Toepfer

and Clar are completely silent with respect to determining a new apply rate based on excessive vehicle weight as acknowledged by the Examiner on page 7 of the Office Action. Accordingly, the combination suggested by the Examiner does not teach or suggest the present invention, and there would be no motivation to combine the Toepfer, Clar, and Lalor. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination. *ACS Hospital Systems, Inc. v. Monteffore Hospital*, 732 F.2d 1572, 1577.

Applicants assert that the Examiner's combination of Toepfer, Clar, and Lalor is highly speculative and is not supported by prior art. A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of the invention to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one "to fall victim to the insidious effect of hindsight syndrome wherein that which only the invention taught is used against its teacher." *In Re Kotzab*, 217 F.3d 1365. The Examiner has fallen victim to such hindsight reconstruction.

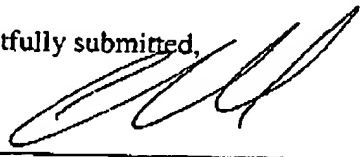
Furthermore, Claim 12 has been amended to include the limitation of determining the condition of degraded braking effectiveness by computing a rear speed difference between at least one front tire and at least one rear tire and comparing it to a pedal position dependent threshold value. The prior art cited by the Examiner, singly or in combination, does not teach or suggest the invention of Claim 12.

CONCLUSION

The entire Office Action dated November 19, 2003, has been carefully reviewed and this response is submitted as being fully responsive thereto. In view of the preceding remarks, Applicants respectfully submit that Claims 1, 2, 4, 5, and 7-15 are in condition for allowance and respectfully request such action at the Examiner's earliest convenience. If the Examiner believes that personal contact would be advantageous to the disposition of this case, he is requested to call the undersigned at his earliest convenience.

If for some reason a fee needs to be paid, please charge Deposit Account No. 07-0960 for the fees, which may be due.

Respectfully submitted,



Christopher DeVries - Attorney
Reg. No. 44,654
Telephone: 313-665-4969

CD:sh